

THE NLRB FIELD EXAMINER

William H. Rikør

Copyright 1951
Committee on Public Administration Cases
No. 3 Thomas Circle
Washington 5, D. C.
May 1951

320.7
C734s
no. 16.
C 5.

UNIVERSITY
OF FLORIDA
LIBRARIES



THE NLRB FIELD EXAMINER

William H. Rikor

Copyright 1951
Committee on Public Administration Cases
No. 3 Thomas Circolo
Washington 5, D. C.
May 1951

320.7 .

C 7345

74.16

C.5

The NLRB Field Examiner

Foreword

The role an individual plays in his immediate working group and in the larger administrative structure of which it is a part is determined by the interplay of many factors--his personality and previous experiences, the behavior of those both near and remote in the organization, outside pressures--to mention only a few. Furthermore, in an administrative hierarchy, the individual's actions are necessarily a matter of organizational as well as private concern. In this case, the role Maurice Howard, a field examiner in the Twenty-first Region of the National Labor Relations Board (NLRB), came to play over a period of about two years from 1937 to 1939, eventually made it necessary for those at the top of the NLRB pyramid--the three Board members--to decide whether or not he should be discharged.

The Howard story is a very small fragment in the complex mosaic that constituted the pattern of public relations and personnel administration of the NLRB in its early days. The confusion and pressures which influenced that pattern were intense, for passage of the National Labor Relations Act had represented a new, big, and controversial step in labor relations, an area long marked by bitter differences of opinion. Many of the Act's opponents among employer groups never became reconciled to its existence. Labor, whom it was intended to aid, became sharply divided in 1937 with the CIO-AFL split.

The Board and its staff were caught in the three-cornered fight over unionization, jurisdiction and the control of collective bargaining that developed. Specific criticism of the Board took the form of persistent complaints of bias in the administration of the Act, of inefficiency, of poor staffing, and the like. Combined with general anti-NLRB sentiment among certain powerful groups these criticisms made it possible for a coalition of Republicans and conservative Democrats in the House of Representatives to secure the appointment of a Special Committee to Investigate the NLRB, under the chairmanship of Congressman Howard W. Smith, Democrat of Virginia.

Needless to say the Smith Committee, as it was known, was not sympathetic to the NLRB. It expected to find and sought, for example, evidence of Communist infiltration. Quite naturally it was also on the alert for charges of bias, especially of anti-employer or pro-CIO bias. And most of the allegations of bias which it took up did accuse the Board and its staff of favoring the CIO. But in connection with its investigation of the staffing and conduct of the Los Angeles field office of the Board, the Committee found complaints of both pro-AFL and pro-CIO bias. The Howard case is a discordant part of the confused Los Angeles story.

The printed record of the proceedings of the Smith Committee covers some six thousand pages; the whole Los Angeles episode occupies perhaps no more than 200 pages of the total; and Maurice Howard's role is touched on in a relatively minor portion of the 200. This arithmetical relationship bears some reasonable resemblance to the relative significance of the Los Angeles situation and the

Digitized by the Internet Archive
in 2011 with funding from
LYRASIS Members and Sloan Foundation

<http://www.archive.org/details/nlrbfieldexamine00rike>

Howard difficulties in the total complex of the Board's troubles. Indeed, investigation and action on complaints from the Twenty-first Region were permitted by the Board to drag out for a long time. The reasons for this, as Chairman J. Warren Madden described them to the Smith Committee were these:

Well, there were several causes. One was the ever present cause of our being short-handed and the lack of persons of importance and standing with the Board to go out on short notice to do a chore like this Los Angeles chore.

Another was that we were not as seriously disturbed by the reports from Los Angeles as it might now be made to appear. In other words, it was the impression of the Board that things were going along tolerably well at Los Angeles, and that there was not a critical situation there, and the combination of those two things postponed a final treatment of the Los Angeles situation.

Thus Maurice Howard was a pretty small factor in the problems of the NLRB; actually, in Los Angeles, as the following pages will show, Howard's difficulties were inextricably entwined in the difficulties of his superior, the Regional Director. But certain characteristic features in Howard's behavior are of general interest to students of public administration and the whole tale is of value for the glimpse it affords of certain aspects of informal organization and leadership, group loyalty, field office - central organization relationships, discipline and morale, and "outside" pressure.

The enforcement of new and controversial legislation like the National Labor Relations Act calls for zeal and, by the same token, attracts and even develops zealots. Maurice Howard was a zealot. For some tasks zealots may be useful, even necessary; but almost inevitably

they create problems. In Howard's case, his behavior led to a minor crisis in the Board: Member Leiserson recommended his dismissal, Member Smith recommended retention, Chairman Madden cast the deciding vote. The following account *gives in summary form the information available to Chairman Madden when he made his decision. The reader's problem is to decide what he would do in Mr. Madden's place.

*The material for this study has been derived almost exclusively from the record of the Smith Committee (Special Committee to Investigate National Labor Relations Board. Pursuant to H. Res. 258, House of Representatives, 76th Congress, Second Session.) The record is composed in large part of memoranda, letters, and reports taken from the Board's files by the Committee and originally written, presumably, with little or no thought that they would eventually be used in a Congressional investigation and published. Particular reliance has here been placed on a long report on conditions in the Los Angeles office prepared for the Board in the summer of 1939, by George Pratt and Gerhard P. Van Arkel, two senior NLRB staff members, under circumstances described below. All quotations, except where otherwise noted, are from the Pratt-Van Arkel report which appears on pages 233 to 300 of Volume I of the Smith Committee's hearings.

The Case

Maurice Howard came to the Los Angeles regional office of the NLRB in the spring of 1937, and there his great struggle began. Immediately before this, he had spent about two and one-half years as a \$2600-a-year field examiner in the Seattle regional office. He had been an instructor at Reed College, Portland, Oregon when he was hired, in October 1934, by Charles Hope, Seattle regional director, on recommendation of the college's president, Dexter Keezer. In a letter to the Board at the time, Hope expressed himself favorably about Howard:

....Mr. Howard has a splendid labor background. He is familiar with collective bargaining. I believe he will be capable of handling cases in the near future...I checked him through Labor and Industry in Portland....

A man of good habits, a student, and has a pleasing personality...

Hope's expectations about Howard were not entirely fulfilled. In the fall of 1936, the Secretary of the Board, while on one of his routine tours of inspection of the regional offices, made the following report to the Board on Howard:

Howard, according to Hope, is completely unable to settle cases. Hope sends him out to investigate them, in the first instance, and thereafter Hope finds it necessary to take over the work on cases himself.

As the Board knows, Hope is not at all pleased with the type of work Howard does. He criticized Howard's tendency to go out and investigate a case in its initial stages, advise the union how to perfect its organization, advise them to further communicate with Hope and ask for his personal intervention, and then return to Seattle without having bothered to interview the employer.

Hope further states that even when there is work to do around the office, Howard spends most of his time in the office reading books.

I had quite a long talk with Howard and he is very frank in his attitude that the Board's chief value is in actively helping labor organize, rather than just to protect their right to organize. He doesn't think the Board is doing enough for labor at the present time and believes hearings should be held even when the Board obviously has no jurisdiction, if the holding of such hearings will help labor organization.

He was unwilling to see anything done about the Boilermakers' claim for representation in the Long View Fibre case, because he thought any such action on the part of the Board would hurt the CIO and help the A.F. of L.

Hope is constantly fearful that Howard's actions will finally give the regional office a black eye and prejudice the employers and conservative unions to the extent of diminishing the usefulness of the office.

Whether because of this report or direct complaints from Hope, J. Warren Madden, Chairman of the Board, drafted a letter to Howard on April 6, 1937 in which he said,

The Board has a request to make of you. It is that you refrain from your close association with labor leaders and your attendance at union meetings.

The particular reason why it is necessary to ask you to do this is because of the current divisions and sub-divisions within the labor movement itself and the high feelings which quite naturally exists between the different factions. These divisions are most unfortunate as we all recognize. It would be wrong for any of us to contribute to the seriousness or duration of the current divisions of the labor movement by encouraging one faction or the other to militant action, unless that encouragement necessarily resulted from something which fell

within the line of our official duties. If, outside the line of those duties, we meddle in the unhappy controversies of workers, we are only giving aid and comfort to unfair employers, and postponing the day when labor as a whole will obtain what it is entitled to.

I suppose that nearly every one connected with the staff of the Board has some preferences of his own as between the different factions in the current split in the labor movement. On many occasions our official actions necessarily operate for the moment to the disadvantage of one or the other of the factions and as a consequence we are in the disfavor of that faction for the moment. The only answer that we have to any complaint of that sort and the only justifiable answer that exists is that we were minding our own business in the action that we took and were by no means injecting ourselves into the business of others. If this answer is true, it is proved by our conduct in subsequent cases. If it is not true, and its truth is not so proved, then whatever criticism may come is justified.

I have been unduly verbose in saying a rather simple thing. My justification is that this simple thing is of very great importance to the work of the Board and to the success of the labor movement. We appreciate the excellent work that you have done in your region and feel sure that the excellence of your work will in no way be diminished by following these suggestions...

When circulated to the other two Board members the draft met the following criticism from Edwin S. Smith:

...The... (letter) to Howard is pretty unfair in that it starts off abruptly by assuming the truth of the contentions that Howard is unduly mixing in union affairs. I would be willing to bet a cookie that his participation is just about one-tenth of one percent of what Hope does. I doubt if any of our directors, except, perhaps, Charlie Logan, handles his job in a more "political" manner than Hope. I am not here criticizing such tactics, but I do point out that Hope is a strange person to utter

this kind of criticism. As a matter of fact, Hope's intimate contacts are with politicians and employers as well as labor leaders, so that they may be free of some of the criticism alleged to some of Howard's doings. My inclination is to believe that Hope greatly exaggerated Howard's activities and objects to them principally because they are on the side of more radical elements in the unions, with which Charlie is not sympathetic. I most strongly repudiate any censoring of Howard based on such a background...

I indicated yesterday that Howard was a very malleable, conscientious person. He has suffered acutely from the deprecatory attitude of Hope toward him. I certainly do not want to be a party to increasing his discomfort. The only letter which I think is warranted in sending to Howard is one that indicates that we have heard that his too close association with certain factions in the unions and particularly his attendance at union meetings had been injurious to the best interests of the Board...

Madden finally sent the following letter to Howard:

Dear Mr. Howard: It has been represented to the Board that you have been rather closely identified with certain people and certain factions among organized labor; that you have attended union meetings, etc. We think that the excellent work which you have done for the Board would not be adversely affected by your refraining from doing these things. We feel sure that you will understand why we think this is necessary...

It was at this time that Howard was transferred to the Los Angeles office, going as a field examiner with no change in salary.

He answered Madden from Los Angeles on April 21, 1937, saying

My dear Mr. Madden: In the rush of Board activity, I have been unable to acknowledge until now your letter of April 7, which was forwarded to me here from Seattle.

For me, a former pedagogue who has heretofore been safely sheltered from life's evil ways, to become suddenly identified as a labor factional-

ist is something which I cannot avoid viewing with mixed emotions. It is so reminiscent of the chaste cleric who, thrilled with the accusations of being a roue, is ashamed to confess innocence.

However, I have been for the last three weeks safely removed from temptation.

I agree with you that my work need not include the doing of the things I have been represented as doing. They will not be done...

The transfer to Los Angeles and the gentle reprimand from Chairman Madden were not followed by a peaceful period in Howard's career; in the Los Angeles office he found himself under the supervision of a Regional Director whom he soon came to distrust. The Regional Director, and the center of the controversy that ensued, was Towne Nylander. A former college professor, he had been in office since September 1935. At the beginning of 1937 he seemed to be on good terms with union members and labor leaders in his Region, most of whom were in the AFL. He was regarded as a liberal and his personality seems to have had an effective impact.

A favorable reaction on Howard's part might have been expected; but Howard's suspicions were soon awakened. Not long after he came to Los Angeles he asked Ralph Seward, the Regional Attorney, if Nylander was not playing both ends against the middle. Seward denied the accusation; Howard continued to suspect.

In May, Howard was given a promotion to \$3,200 a year. Nylander spoke highly of him in the semi-annual salary reviews-- "one of the best...thoroughly capable---doing an excellent piece of work"--but Howard's suspicions of Nylander seemed to increase.

These suspicions became particularly acute at the time of the second Examiner Case, shortly to be considered.

In July, the environment of the Los Angeles office underwent a change: the increasing rivalry in the national arena between craft and industrial unionism became clearly reflected on the local scene. Harry Bridges, the militant left-wing president of the International Longshoremen's Union, was appointed West Coast Director of the CIO (then still nominally within the AFL). He began an organizational drive on the West Coast and in Southern California in particular. Inter-union friction soared because, in addition to organizing groups hitherto unorganized, Bridges' staff also made strong efforts to bring into the CIO camp groups of workers who had already joined the AFL.

Soon after Bridges' appointment, Nylander made a speech in which he criticized John L. Lewis (then leader of the CIO) for appointing Bridges, saying that Bridges was not the best man for the job. This criticism of Bridges by Nylander was considered lese-majeste by many CIO members. They felt that Nylander's criticism showed beyond a question that he was either in the pay of the employers or biased in favor of the A.F. of L. or both. Howard, as a CIO sympathizer, shared this view.

Following this incident, strain began to show in the Regional Director's relations with the CIO unions, although instances were not lacking where he was sharply criticized by AFL unions as well. The major event in the development of great distrust of Nylander in CIO ranks and among members of his staff, such as Howard was Nylander's

handling of the second Los Angeles Examiner case.

In this case, the CIO Newspaper Guild filed, for the second time, charges that the Examiner had discriminated against some of its members in layoffs and was in collusion with a new AFL newspaper organization sponsored by the president of the local AFL Central Labor Council, named Buzzell. Stewart Meacham, the field examiner assigned to the case, described what happened in a letter written five months later at the request of the Board's Secretary.

He began by recounting that he had not been able to turn up legally sufficient evidence of discriminatory discharges but had found some suspicious occurrences pointing to Examiner-AFL collusion. He went on to say that one evening he overheard part of a telephone conversation between Nylander and Buzzell, in which Nylander was violently denying some sort of charge. Nylander then turned to Meacham and vigorously attacked Meacham's handling of the case (i.e., agreeing to interview witnesses at night with appointments arranged by a Guild official--a standard practice) about which Buzzell had been complaining. On the following day, according to Meacham, Nylander apologized, then asked Meacham to prepare a report and turn the case file over to him.

Meacham soon learned that Nylander, using his report, which had recommended dismissal of the discrimination charges but further investigation of the alleged collusion, had recommended a flat dismissal of all charges including collusion. Meacham was "pretty upset" over this development. He then discussed the matter, according to his own account, in general terms with the Guild organizer. The

Guild appealed the Regional Director's decision to the Board, and the Board asked Nylander for a report. Nylander told Meacham to prepare a defense of the recommendation as sent, and Meacham, after talking to Howard, stalled. Eventually Nylander prepared his own defense which, according to Meacham, "contained many elements of pure fabrication."

Nylander then called a meeting of all field examiners. He told them that the Guild was attacking him for his action in the Examiner case, and that he had discovered that the attack had been initiated within the office. He claimed that Meacham's talk with the Guild organizer was the beginning of the trouble. Meacham then told his side of the story (not including the over-heard telephone conversation). Thereupon Nylander backed down and apologized for taking the case away from Meacham. After the conference Meacham stayed behind and asked if Nylander thought him disloyal. According to Meacham, Nylander said: "No, boy, if I trusted the others the way I trust you, I wouldn't worry at all."

This incident has been told at length because it reveals characteristic patterns of action. Blocking or attempting to block Nylander by delays, and by talking sympathetically with (or even disclosing information to) CIO leaders became normal practices; and it is to be noted that, although the Examiner Case was Meacham's problem, Howard's advice was followed. Moreover, Nylander's behavior also was revealing. In discussing the Examiner case, the examiners in the Los Angeles office were sharply critical of the unexpected removal of a case from an examiner's hands, the apparent yielding to outside pressure, and the shifting of ground which they

felt marked Nylander's handling of the case. In months to come they were to criticize his treatment of other cases on the same grounds.

CIO circles gradually learned of Nylander's recommendation that the collusion charges be dismissed and they branded this a "double cross". The leaders of the so-called Bridges group (the left wing CIO) talked with Howard who they felt was sympathetic and Howard, in turn, became even more distrustful of Nylander. With the Examiner incident as a nucleus, stories of Nylander's alleged favoritism toward the AFL grew and multiplied in the months following January 1938.

By March the AFL-CIO split had become exceedingly bitter in the Los Angeles area. Nylander's long-standing friendships with AFL leaders were now regarded with deep suspicion by the CIO; but he refused to give them up. His personal invitations to CIO leaders to win their good will only antagonized them further.

During this same period, the CIO began earnest attempts to raid some small furniture companies which the AFL had organized after a three-year struggle in 1937. In handling the numerous cases which followed, Nylander made some mistakes, as he later admitted, mistakes which mostly worked against the CIO. This increased suspicion of him. Howard, on the other hand, during this period, irritated the AFL by advising companies not to enter into any AFL contracts while petitions filed by the CIO were pending.

Turnover in the field examiner staff during the early months of 1938, resulting partly from Nylander-examiner friction, left Howard the senior member of the group. Two new examiners arrived, Pomerance in April and Muir in May. The three soon found a kinship in their

similar reactions to Nylander's procedures, and their interaction seems to have widened the breach between Nylander and the examiners. It should not be forgotten, however, that the local organization drive of the CIO was posing many problems in administration, labor relations, law, public relations, and the like which would have tended to aggravate individual differences of opinion over procedure in any Labor Board office. Yet it was certain aspects of Nylander's administration of the office rather than larger questions which -- over the period of the next twelve months -- caused the split in the Los Angeles office.

Howard was the leader of the anti-Nylander faction in the office. The complaints he and the others made against Nylander fell into five categories:

1. They charged him with a lack of honesty in dealing with people, including the examiners themselves, for example, by making contradictory statements to employers and unions with regard to cases.
2. They were disturbed by his practice of "short circuiting" cases -- i.e., holding conferences with union and company representatives without calling in the examiner who had been handling the case. This practice would presumably have been annoying in any event to the examiners, though it was obviously within Nylander's discretion; under the particular circumstances of

the Los Angeles office they regarded his behavior as darkly suspicious.

3. The examiners felt that Nylander treated them like college students. On one occasion in the Spring of 1938, Nylander told the examiners that he would recommend no one for a pay increase unless he took outside study courses. This led Howard to an open outburst, in which he was supported by all the other examiners but one.
4. The examiners did not like the way they were given case assignments; some examiners were given only AFL cases, others only CIO cases. At the request of an AFL labor leader, Howard was removed from an assignment Arizona/and another examiner sent there in his stead.
5. The examiners did not like Nylander's manner in dealing with them. They complained that at times he attacked them violently, and then would apologize profusely. They felt that he did not discuss the serious issues of the cases with them and that he was inaccessible.

The result of these practices (as viewed and interpreted by the examiners) was that Nylander alienated almost every one of them. Of the six employed in the office in the spring of 1939 only one, McKay, kept aloof from the developing "clique". Howard had the strongest and most persistent feeling of opposition to the regional

director; Pomerance was quite critical; Muir and Davies were willing followers; and a fifth, Yager, was "on the fence".

Howard, in short, was in a position of leadership among the examiners. Zealous and aggressive in his work, he was almost fanatic in carrying it on. With his zeal went an automatic suspicion of those who disagreed with him. His sympathies lay with the left wing of the contending labor factions, though according to a later report, there was no "evidence that he (was) or (had) been a member of the Communist party or fellow traveller." Nor did he appear to slight his work in cases brought by right-wing labor factions.

Howard believed that the Board and its staff had the duty to organize unions; in varying degrees, the other examiners accepted this philosophy. Nylander, on the contrary, approached his job from more of a mediatory standpoint and relied largely on personal relations. His speech was frequently violent, but his actions tended to be indecisive. And as more and more difficult cases came up, his prestige in the labor circles of the Los Angeles region declined.

From the middle of 1938 on there were an increasing number of instances when the regional director and the examiners took divergent views on the handling of a case. When the disagreement was discussed, Nylander often accepted his subordinates' views. At other times, there was no open insubordination but considerable obstruction by the examiners. They developed the habit of withholding important papers from the case files--by locking them in their desks--and of omitting information from oral reports, in order to influence Nylander's decisions and action. Accordingly, there were instances when Nylander

made recommendations to the Board or took other official moves without full cognizance of the available facts of a case.

Obstructive behavior was becoming more customary among the examiners when the "Arizona incident" took place; it became notorious not so much for what had happened as because it indicated Nylander's very close friendship with Andrew Holohan, Secretary of the Arizona State Federation of Labor. The incident was a party in Holohan's Phoenix apartment. Just what happened at this party no one was ever able to determine--who attended and for how long, who got drunk, what happened to the waitress who kept racing dogs. Howard, who was accompanying Nylander to Phoenix on a case, was at the party with him and was deeply disturbed by what seemed to him excessive friendship between the Director and the AFL union chief. He brought back the story of the night and it traveled a number of grapevines, further influencing opinion of Nylander in the office. A third or fourth hand account in "garbled" form eventually reached the Board in Washington.

On the basis of matters like the Arizona party, which seemed to indicate to Howard and Pomerance (who then had been with the office less than two months) that Nylander was at best an incompetent supervisor and at worst in collusion with employers and the AFL, the two examiners collaborated on May 19, 1938 on a letter to Nathan Witt, Secretary to the Board, in which, without being more specific they accused Nylander of "association with discredited labor leaders" and asserted that "things have been growing steadily worse." Replying, at their request, to Howard's home, Witt wrote

that R. M. Gates, one of his traveling assistants, was coming to Los Angeles in June and that the examiners could have confidence in him. It may be noted that Witt was closely associated with the left wing of the CIO, and possibly predisposed to think the worst of Nylander whose sympathies lay elsewhere.

Howard and Pomerance were aware when they wrote to Witt that Harry Bridges was in the midst of conducting his own investigation of Nylander's administration of the Los Angeles office and planning a protest to the Board. This soon took the form of a letter to Witt from a CIO official named Robertson, on behalf of the Los Angeles CIO Council (dominated by Bridges), complaining of Nylander's handling of certain CIO cases.

Gates arrived in Los Angeles in June to hear examiner and union complaints. He had been instructed by Witt to conduct his investigation in the manner of a routine check up in order to conceal its purpose from Nylander. He spoke with both the examiners and certain union representatives, behaving all the while as though there were no charges and no special investigation. Nylander did not become suspicious. On the other hand, there was no opportunity for Gates to hear the regional director's side of the story or for him to report the results of the investigation to the examiners.

Despite these limitations on his inquiry, Gates was able to make some shrewd guesses on the whole situation in his account to Witt and to the Board of the Los Angeles office's problems. He reported his suspicion that there were some "leaks" from the office to labor groups outside (presumably from the examiners) and cited some question-

able points and instances of poor judgment. But there was nothing in his report that suggested or seemed to require extreme disciplinary action at the time.

No action at all was taken by the Board on any aspect of the report. Nor was Nylander informed of the charges against him, for Gates felt that life would become "unbearable" for Howard and Pomerance if Nylander were told. However, whatever the merit of this conclusion, the failure to advise Howard and Pomerance of the substance of Gates' report led them to conclude that their accusations were accepted in toto and that the Board would soon take drastic action, action directed solely against Nylander. Nylander, ignorant of the whole affair, took no steps to correct the unsatisfactory state of examiner morale and behavior.

Washington-Los Angeles relations were not improved by the complaints about Nylander. At least from the time of Gates' report, the Secretary's office began to distrust Nylander's judgment. By the fall, it suspected his motives. Witt corresponded with Nylander in July and August and mentioned some of the CIO charges. Nylander asked to be told of all such matters. The Secretary replied that Nylander should make an effort to reestablish the confidence of the CIO.

During the summer of 1938 both the examiners and the Bridges group were waiting for some action by the Board on the basis of Gates' report. Both became increasingly dissatisfied when nothing happened. Howard, Pomerance, and Muir had by that time come to distrust Nylander utterly, especially since, by reason of their conver-

sations with Gates, they felt that the Board was relying on them rather than on Nylander.

In September Muir lunched with Morgan Hull of the Newspaper Guild (CIO) and "leaked" to him what he had picked up around the office about the Arizona incident. It was through a letter from Hull that the Board learned in October, five months after the event, about the party in Holohan's apartment.

By October, Howard and Pomerance had become so anxious over the Board's silence that they chipped in to buy Pomerance a ticket for an airplane trip to Washington on his vacation. Pomerance talked with the three Board members, and with Gates and Witt about Nylander's handling of certain cases and left them memoranda on the matter. Examiner criticism of Nylander was again brought before the Board in November when Howard went to Washington as a representative of the Examiners' Union at an annual conference.

Whatever opportunities these visits provided the Board for clearing up the situation were neglected. Nothing was done and Nylander was told nothing. The result was merely to leave a further feeling of distrust and suspicion toward Nylander in the Washington office. During Howard's visit, however, he was told that another representative of Secretary Witt's office, Fred Krivonos, would be coming out to Los Angeles, probably some time before Christmas, and would look into the situation.

In late November, the examiner group became fully organized. All were members of the Examiners Union (McKay subsequently quit) but opposition to Nylander appears to have been coincidental with, rather

than a part of union business. Despite the congealing of sentiment among the examiners and his own growing awareness that there was a "clique" of sorts, Nylander found reason to speak well of Howard's work in a letter to Witt on November 23, 1938 reviewing the salaries of the field examiners. He noted that Howard had the best record for adjusting the more difficult cases and recommended that he, together with one other, be given special consideration in receiving salary increases.

On December 8 Pomerance, who specialized in movie industry cases, wrote to Witt making some "serious charges" about a report Nylander had made on certain movie cases. The letter was not brought to Nylander's attention but a subsequent memorandum from Witt to the regional director showed that Pomerance's communication had been taken into consideration. Pomerance saw the reply memorandum, which of course, was put in the file, and this was further evidence, as far as he was concerned, that the Board was relying on him and, by inference, Howard and the other field examiners rather than Nylander. He was, of course, less inclined than ever to cooperate with Nylander for that reason.

Nylander eventually learned that Krivonos was expected at the office and some examiners thought they saw a decided change in his behavior which lasted until March 1939.

Krivonos did not reach Los Angeles before Christmas. The examiners were disappointed. They met informally before the holiday and some thought they should resign while others were for writing to the Board. Discussions on December 27 and 28 led to a decision to

write. A letter was prepared by all those present (McKay was in Arizona) typed out by Muir, and mailed in. It said, in part, that the signatories would resign in a body unless action was taken on their complaints about Nylander.

The basic motive of the group now firmly established, does not appear to have been personal or political but rather the desire "to straighten out matters in the office", to correct what was considered "mishandling of cases". Yet opposition to Nylander reached such dimensions that morale and office administration were seriously affected. The examiners felt that the Board had accepted their estimate of Nylander but was unwilling or unable to take remedial action. Led by Howard, they concluded that they must assume responsibility themselves for preventing what they regarded as Nylander's sabotage. The three chief devices that they had come to adopt, consciously or unconsciously--aside from direct argument with Nylander--were the maintenance of a sort of united front with the CIO, "leaking" stories about Nylander to outsiders, and withholding from the files materials that they did not wish Nylander to see. Nylander knew, or suspected the existence of the united front and the calculated leaks: but he apparently did not know that the examiners, under the sway of Howard's zeal, were locking up essential materials in their desks and failing to give full oral reports on investigations.

The situation in the Los Angeles office was thus badly disturbed when the examiners' sense of virtue about their own behavior received another fillip from a blunder on Nylander's part. On February 6, 1939, Nylander, who frequently spoke publicly on labor topics, ad-

dressed the Inglewood Community Forum in the California town of that name. A newspaper account of the talk quoted him as saying:

I'll tell you frankly that when we go into a hearing, the employer hasn't got a chance. There's not a scintilla of doubt as to the employer's guilt.

Because of this account, which quickly found its way into the Congressional Record, the Board suspended Nylander on February 27 and ordered an investigation, by a disinterested citizen, both of the speech and the accuracy of the newspaper account. The inquiry revealed that Nylander had not been disloyal but had intended to indicate that he made as certain as possible that a case was water tight before taking action against an employer. The Board reinstated him on March 24 with a reproof for his "error in judgment" which caused "an unfounded alarm" in the minds of parties to Board proceedings and the public at large.

Krivos arrived in Los Angeles a little before the reinstatement. He was in the midst of a routine "check-up" trip to several regional offices. In Los Angeles the "check-up" was awkward. Krivos was investigating the charges against Nylander, while the latter, who had had difficulty with examiners over what Gates had allegedly told them privately about handling cases almost a year before, tried to persuade Krivos to meet with the examiners in his presence. He did not succeed; nor was he asked to tell his side of the story.

Krivos, who made his report to the Board late in May and in June, 1939, was influenced by the feeling of distrust of Nylander which

had been engendered by the incidents occurring over the previous year. Having heard only one side of the story, his report was partial. As a result, the Washington staff and the Board itself did not really understand the Los Angeles situation; all their information came from the two reports, both based on ex parte investigations, from two letters from left-wing CIO unions, and from the letters and visits of the examiners.

Probably as a result of Krivonos' report and possibly also because Seligman, an organizer for the United Shoe Workers (CIO), while in Washington in May, had suggested to Board Member Leiserson that the Los Angeles situation be looked into, Nylander and Howard were summoned to the Board in July 1939 to explain what had been going on. They remained in Washington from the 5th through the 8th. There Nylander learned for the first time of the examiners' letter and of the other ways in which his staff had criticized him to the Board. So great was the disparity between his and Howard's account of events in Los Angeles that the Board decided to assign two experienced and trusted staff members--Gerhard P. Van Arkel and George Pratt--to examine the situation thoroughly and report. Pratt and Van Arkel began the job on July 10. They reviewed records, correspondence, cases, and reports both in the Washington and Los Angeles offices and interviewed and invited statements from staff and others in both places.

In the meanwhile, Howard and Nylander returned to Los Angeles--the regional director taking the train, the examiner going by plane. Howard arrived first, on a Monday, and discussed what had happened in

Washington with the other examiners. During his four-day ride across the country, Nylander decided to tender his resignation to the Board and then wait to be cleared and reinstated. Not long after his return on Thursday, he called in AFL and CIO representatives, separately, and told them of his decision. Before the time scheduled for Nylander's own press release on the subject, two AFL officials issued a statement announcing the resignation and alleging that it was the culmination of "a long chain of intrigue" carried on by the CIO and the Communist Party to gain control of the local NLRB office. Nylander countered with another release characterizing the attempt to discredit the CIO in connection with his resignation as "ridiculous".

Nylander's letter of resignation to the National Labor Relations Board laid down two conditions under which he would accept reinstatement; first, that he not be hampered in speaking publicly on labor topics and second, that all the examiners in the Los Angeles office, except McKay, be dismissed.

Pratt and Van Arkel completed their investigation on August 23, 1939. The major conclusions contained in their report to the Board were: (1) that, although Nylander did not deliberately sabotage the work of the Board as charged, he was by temperament and personality unsuited for the job--hence should not be rehired; (2) that all the examiners except Howard be transferred to other offices (or at least Muir and Davies be transferred) and that all of them be strongly reprimanded for their insubordination; (3) that, in order to avoid such situations in the future, a new administrative division be established in the Washington office to relieve the Board's Secretary of super-

vision of the Regional Offices; and (4) that:

...with respect to Howard, it is felt that his zeal for his convictions and an overly suspicious nature led him to set himself up opposition to Nylander without any adequate evidence that Nylander was disloyal to the Board. The task of any Director who succeeds Nylander in the office will be impossible with Howard there as the center of the group of examiners. While Howard might function properly in another Regional Office under a strong Director with adequate and close supervision, it is felt that the Board should not assume such further responsibility and it is therefore recommended that he be dismissed. If not dismissed, he should be strongly reprimanded for his part in the affair and made to understand not only his subordinate position to the Regional Director but the necessity of loyalty to his superior and he should be transferred to a region on the East Coast on probationary status.

In this way the Board was left without a clear-cut recommendation for action on Howard, although Pratt and Van Arkel indicated the administrative problems which would arise from his retention.

Board Member Edwin Smith favored transferring Howard to another region. He wrote, in a letter to Chairman Madden,

Briefly my ideas about Howard are these: I am willing to believe that he is a zealot and that this quality, unless drastically curbed, could well result in making his work for the Board not what we would wish. However, I also believe that he is both intelligent and conscientious. My definite inclination would be to give him another chance in an office where we have confidence in the director or where he could be closely supervised from Washington. I would suggest Chicago, Philadelphia, or Baltimore.

He certainly has given devoted service to the Board under two different directors, whose own temperament and activities would be most likely to call out Howard's weaknesses. In an office more normally run, and with a good stiff lecture,

I think he might still be made into an asset. I would definitely put him on a six month probation in such a situation, and that is my recommendation....

Board Member William Leiserson disagreed in a note which was attached to this letter:

I think Howard's performance in connection with the Los Angeles situation justifies his dismissal. It is important that his services be discontinued in order to establish confidence in the Los Angeles office. He should be given and opportunity to resign if he prefers that.

A summary view of the justification for dismissal was contained in another letter:

It is the function of a Field Examiner of the Board, as a public officer, to take a calm and dispassionate attitude toward the interests which the Act and the Board's work touches, doing his part to enforce the law and leaving it to the event to determine whether this means more unions or less unions, or more or less success for any particular union. It is his further duty, as a part of an organization, to do his work within the boundaries of that organization. That means that he should not disclose the information or supposed information which comes to him as a member of an organization to outside interested people, for the purpose or with the effect of impairing the interests and effectiveness of other members of the organization. It means that he should not maintain an undue intimacy with persons representing one interest in relation to the Board's work, thereby making other interests suspicious as to whether he is or can be impartial and objective in his work. It means that he should not be unduly and unjustifiably suspicious of other persons in the organization, assigning improper motives to their conduct, in some cases without reason. It most certainly means that he should not carry on official work outside the rules of the organization, withholding from the official files papers and information which belongs to the Board.

With all those factors in mind, Chairman Madden cast the deciding vote. How do you think he should have voted?

SOCIAL SCIENCES ROOM

Date Due

DATE DUE

SOCIAL SCIENCES ROOM

PCL 35

OVERNIGHT

RELEASED FROM

RESERVE DESK

PCL 35

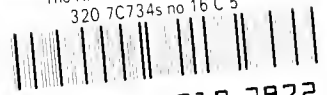
RESERVE DESK

REL - FROM

ROOM USE

ONLY

The NIRB field examiner main
320 7C734s no 16 C 5



3 1262 03219 2972

